REMARKS

Applicants have amended the specification to include a claim for benefit of previously filed provisional applications. This claim was initially made with the application as filed on the Declaration Combined With Power of Attorney. Claims 1-29 are pending in the application. Applicants would like to point out that claim 24 is not placed in any grouping. In order to be fully responsive, Applicants have included claim 24 in Group I.

ELECTION/RESTRICTIONS

Patentability Distinct Inventions

On pages 2-3 of the Office Action, it alleges that there is more than one distinct invention, thus requiring a restriction of the present invention to one of the following inventions.

I. Claims 1-18, 24 and 25, drawn to fabric softening compositions, classified in class 510, subclass 516.

II. Claims 19-23, drawn to fabric softening compositions, classified in class 510, subclass 516.

III. Claims 26-28, drawn to methods of using fabric softeners, classified in class 134, subclass 34.

IV. Claim 29, drawn to a method of reducing water volume, classified in class 134, subclass 26.

In response to the restriction requirement, and in a desire to expedite further prosecution of the present application, Applicants respectfully elect Group I, claims 11-18, 24 and 25, drawn to fabric softening compositions, with traverse. If the traversal by Applicants does not overcome the restriction requirement, the Applicants respectfully submit that at least Groups I and II be examined together. Applicants expressly reserve the right to file continuation and/or divisional applications directed to the subject matter of the non-elected claimed inventions.

Applicants submit that any prior art search set up for group I will encompass Groups II-IV, as all of the claims of the present invention disclose fabric compositions. Applicants submit that any prior art search set up for Group I should be coextensive with any search for Group II-IV because the novel combination of elements cited in these groups. At a minimum, Applicants submit that Groups I-II should be examined together as all of the

claims disclose fabric softener actives and surfactant scavengers, as well as being classified in class 510, subclass 516. Thus, Applicants respectfully submit that searching of claim groups I-IV or at least groups I-II together would present no undue searching burden for the Examiner.

Species Restriction

The Office Action also alleges that Claims 1-29 are generic to a plurality of disclosed patentably distinct species comprising fabric softening compositions and methods of their use. The Office Action has required restriction under 35 U.S.C. § 121 to elect a single disclosed fabric softening composition, as in example, even though this requirement is traversed.

In accordance with the restriction requirement, Applicants elect the fabric softening composition of Example 1 on page 34, with traverse.

Analysis

Paramount to issuing a restriction requirement, the Manual of Patent Examining Procedure ("MPEP") describes the criteria for restriction as follows:

(A) The inventions must be independent or distinct as claimed; and

(B) There must be a serious burden on the examiner if restriction is required.

MPEP § 803 (8th ed. 2003) (citations omitted). Furthermore, the MPEP requires that "Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the requirement in most cases." MPEP § 803 (8th ed. 2003). Indeed, an Examiner must clearly provide reasons and/or examples to support how the claims define inventions that are independent or distinct, and further to show how there is a serious burden on the Examiner. The present Office Action provides no reasoning or examples of how Claims 1-29 define inventions that are independent or distinct, and no reasoning or examples to show how there is a serious burden on the Examiner to perform a search. Rather, the Office Action simply states that Claims 1-29 are generic to a plurality of patentably distinct species comprising fabric softening compositions and methods of their use. There is no discussion as to how the species are distinct. Since the Office Action provides no reasoning or examples as to how the inventions are allegedly distinct, this restriction requirement is improper.

Even if the claims in an application contain inventions that are independent or distinct, a proper restriction also requires that there be a serious burden on the Examiner. *See* MPEP § 803(B) (8th ed. 2003). As the MPEP explains:

> For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant.

MPEP § 803 (8th ed. 2003). Here, the Office Action does not provide the appropriate reasoning to support a *prima facie* case that a serious burden exists. Indeed, there is no discussion whatsoever as to the extent of the burden on the Examiner to perform the search. Since a serious burden on the Examiner has not been *prima facie* shown, the present restriction requirement is improper.

Based on the above remarks, reconsideration and withdrawal of the restriction requirement is respectfully requested. If, upon reconsideration, this restriction requirement is made final, Applicants respectfully request the next Office Action contain Form Paragraph 8.05 as suggested in MPEP § 821.01 (7th ed. 1998), to show that Applicants have traversed the requirement and have retained the right to petition from the requirement under 37 C.F.R. § 1.144.

CONCLUSION

In view of the foregoing remarks, reconsideration of the application, withdrawal of the restriction requirement, and allowance of all claims are respectfully requested.

Respectfully submitted,

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